

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

SEP 30 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Stations)

(Woodville, Florida))

TO: Chief, Allocation Branch)

MM Docket No. 96-142
RM-8829

REPLY COMMENTS

St. Marks Broadcasting, by its attorneys and pursuant to Sections 1.401 and 1.420 of the Commission's Rules, hereby submits its reply comments in the above-captioned rulemaking proceeding.

1. This proceeding began with a Petition for Rulemaking ("Petition") filed by George Roberts d/b/a Anchor Communications ("Anchor") to amend the FM Table of Allotments to add Channel 250A to Woodville, Florida. On July 5, 1996, the Commission released a Notice of Proposed Rulemaking ("NPRM") setting forth that proposal.

2. On August 16, 1996, the comment deadline established by the NPRM, St. Marks Broadcasting filed "Comments and Counterproposal" ("Comments") in which it requested that the Commission deny the petition of Anchor to amend the FM Table of Allotments to allot Channel 250A at Woodville, Florida, and instead amend the FM Table of Allotments to allot Channel 250A at St. Marks, Florida, as St. Marks' first local service. In that

No. of Copies rec'd 044
List A B C D E

pleading, St. Marks Broadcasting stated its intention to apply for the station at St. Marks if the channel is allotted, and to construct and operate the station if awarded the construction permit. In a Public Notice released September 13, 1996, the Commission announced that St. Marks Broadcasting's proposal would be treated as a counterproposal in this proceeding, and solicited comments by September 30, 1996.

3. The city of St. Marks, an independent, self-contained municipality, is a community deserving of a channel allotment. Section 307(b) of the Communications Act of 1934, requires that the Commission distribute "licenses and frequencies among the several States and communities...."¹ When evaluating whether a "community" merits an allotment or not, the Commission reviews a number of factors. For example, the Commission evaluates whether a locale is incorporated, whether entities and organizations within the locality intend to serve the needs of that community, and whether political, social, or business organizations exist in the community, among other things. St. Marks has such characteristics and deserves its own channel. Woodville does not. Not only do the characteristics of Woodville described in the Petition not support the allotment of a channel, but a comparison of Woodville to the community of St. Marks clearly demonstrates that St. Marks is more deserving of the channel allotment. See Comments at pages 3-6.

¹ See 47 U.S.C 307(b).

4. The characteristics of Woodville, claimed in the Petition (See Petition, "Woodville, Florida Information"), do not demonstrate that Woodville is a city deserving of a channel allotment. Moreover, as the attached Declaration illustrates (See Attachment A, "Declaration of Kimberlee Gordon"), the information listed in the Petition does not accurately portray Woodville, which is not an independently operated locale and exists as a bedroom community of Tallahassee.²

5. The "General Information" listed in the Petition does not disclose that the Woodville Community Board is a group consisting of residential volunteers with no governing ability or authority in the city. Woodville is governed by the Leon County government. And, as stated in the attached Declaration, there are only three churches in Woodville, not six as listed in the Petition. Moreover, there is no business district and very little commercial activity in Woodville. The two shopping centers, Woodville Commons Shopping Center and Lewis Wood Center, are merely small centers with no more than three and six businesses in each shopping area, respectively. See Declaration.

² The Commission has recognized that the testimony of a locality's residents can assist in the determination of whether or not the locality has sufficient "community" status, consistent with Section 307(b), to merit the allocation of a channel. See Beacon Broadcasting, 2 FCC Rcd 3469, 3471 (1987), recon. denied, 2 FCC Rcd 7562 (1987).

6. Although Woodville has a fire station, a grade school, a local community board and three churches,³ Woodville does not merit the allotment of Channel 250A. In Gretna, Marianna, Quincy and Tallahassee, Florida, 6 FCC Rcd 633 (1991), the FCC determined that the community of Steinhatchee, Florida, was not a community for allotment purposes despite the fact that, like Woodville, Steinhatchee has a grade school, a local volunteer board of directors and six churches. In addition to its grade school, volunteer board and six churches, Steinhatchee also has a post office and its own zip code, which Woodville does not have. The fact that the Commission denied the allocation of an FM channel to Steinhatchee, which has even more independent community characteristics than Woodville, supports St. Marks Broadcasting's position that Woodville is not a community for allotment purposes.

7. Woodville residents identify with Tallahassee and the suburb of Woodville relies on the city of Tallahassee for many of its services. St. Marks, however, is a vibrant community with its own zip code, its own form of self-governance through a mayor and city council, and independent city services such as solid waste and trash removal. St. Marks, with its own identity, is deserving of a first local radio service.

³ Woodville does not have six churches as claimed by Anchor in the Petition.

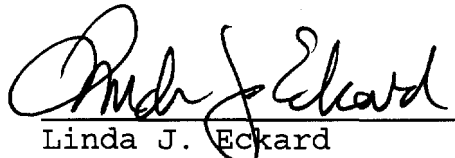
8. Neither St. Marks nor Woodville has an aural service allotment. However, Woodville, located in Leon County, currently receives more than ten FM services but only five FM stations provide radio service to St. Marks, which is located in Wakulla County. In addition, 14 radio stations are licensed to communities in Leon County, yet only one station is licensed to a community in Wakulla County.⁴ The allotment of Channel 250A to St. Marks would provide St. Marks with its first local FM service, allow it to receive its sixth FM service and provide only the second radio station licensed to a community in Wakulla County. In contrast, an allotment of the channel to Woodville would give Leon County its 15th licensed station. The most fair, efficient and equitable distribution of radio services would be to allot Channel 250A to St. Marks.

⁴ The only station licensed to a community in Wakulla County is Station WAKU(FM), Crawfordville, Florida.

In sum, St. Marks Broadcasting requests that the Commission DENY the petition of George Roberts d/b/a Anchor Communications ("Anchor") to amend the FM Table of Allotments to allot Channel 250A at Woodville, Florida, and allot Channel 250A to St. Marks, Florida. St. Marks Broadcasting restates its intention to apply for the channel at St. Marks and operate the station if awarded the construction permit.⁵

Respectfully Submitted,

ST. MARKS BROADCASTING

By: 
Linda J. Eckard


Lisa A. Williams

Roberts & Eckard, P.C.
1150 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20036
(202) 296-0533

Its Attorneys

September 30, 1996

⁵ St. Marks Broadcasting is aware that a proposal is pending before the Commission to award a "finder's preference" to a petitioner who has taken the initiative and burden of introducing a new service to a community. St. Marks Broadcasting herein requests that it be awarded a "petitioner's preference" at the application level if Channel 250A is allotted to St. Marks, Florida and the proposal to award the finder's preference is adopted. See Reexamination of the Policy Statement on Comparative Broadcast Hearings, 7 FCC Rcd 2664 (1992).

ATTACHMENT A

DECLARATION OF KIMBERLEE GORDON

I do hereby declare under penalty of perjury that the statements made in this declaration are true and correct to the best of my knowledge and belief. I understand that this declaration will be filed with the Federal Communications Commission.

As a resident of Woodville, Florida, since 1987, to the best of my knowledge and belief, I hereby state the following:

1. I consider Woodville a suburb of Tallahassee, Florida.
2. I conduct most of my major shopping and recreational activities in Tallahassee, as do most Woodville residents.
3. The Woodville Community Board is a volunteer group of city residents with no governing authority.
4. There are only three churches in Woodville.
5. There are no plans to open a Citizens Bank in Woodville.
6. Woodville is a residential suburb of Tallahassee with very little commercial activity.
7. The Woodville Commons Shopping Center and the Lewis Wood Center are small shopping areas, which contain no major businesses, only small shops.
8. Many Woodville residents commute from the suburb of Woodville to Tallahassee daily for work.

9/26/96
Date

Kimberlee Gordon
Kimberlee Gordon

CERTIFICATE OF SERVICE

I, Lisa Renee Smith, an employee in the law offices of Roberts & Eckard, P.C., do hereby certify that true copies of the foregoing "Reply Comments" were sent September 30, 1996, by first class United States mail, postage prepaid, or, as indicated, by hand, to the following:

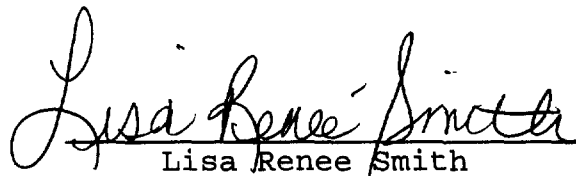
*John Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W. Room 8322
Washington, D.C. 20554

John S. Neely, Esq.
Miller & Miller, P.C.
P.O. Box 33003
Washington, D.C. 20033

Kathryn R. Schmeltzer, Esq.
Fisher, Wayland, Cooper, Leader
& Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Cary S. Tepper, Esq.
Booth, Freret & Imlay, P.C.
1233 20th Street, N.W.
Suite 204
Washington, D.C. 20036

Neal J. Friedman, Esq.
Pepper & Corazzini, L.L.P.
Suite 200
1776 K Street, N.W.
Washington, D.C. 20006


Lisa Renee Smith

* Delivery By Hand